

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JESSE L. YOUNGBLOOD,

Plaintiff,

vs.

M.S. EVANS, et. al.,

Defendants.

No. C 13-2097 PJH (PR)

**ORDER REVOKING
PLAINTIFF'S IN FORMA
PAUPERIS STATUS**

This civil rights case filed pro se by a state prisoner was dismissed and closed on May 14, 2013. Plaintiff has filed an appeal with the Ninth Circuit and the case has been referred back to this court for the limited purpose of determining whether plaintiff's in forma pauperis status should continue or whether the appeal is frivolous or taken in bad faith. Docket No. 11.

An indigent party who cannot afford the expense of pursuing an appeal may file a motion for leave to proceed in forma pauperis. Fed. R. App. P. 24(a); 28 U.S.C. § 1915(a)(1). Pursuant to Federal Rule of Appellate Procedure 24(a), "a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court." The party must attach an affidavit that (1) shows in detail "the party's inability to pay or give security for fees and costs," (2) "claims an entitlement to redress," and (3) "states the issues that the party intends to present on appeal." Fed. R. App. P. 24(a)(1). However, even if a party provides proof of indigence, "an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). An appeal is in "good faith" where it seeks review of any issue that is "non-frivolous." *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). An issue is "frivolous" if

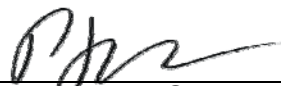
1 it has "no arguable basis in fact or law." See *O'Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir.
2 1990).

3 Plaintiff's complaint was substantially similar to a prior complaint that he filed with
4 this court that was dismissed with prejudice and his in forma pauperis status was revoked
5 on appeal. See *Youngblood v. Warden C 12-4423 PJH* (PR). Therefore, this case was
6 dismissed as duplicative. *Adams v. Cal. Dept. of Health Services*, 487 F.3d 684, 688 (9th
7 Cir. 2007). In the alternative, the case was dismissed for the same reasons as the prior
8 case. Plaintiff generally stated that from 2005 to 2010 there were intolerable prison
9 conditions at Salinas Valley State Prison. Plaintiff provided few specific claims other than
10 he was forced to have a cellmate, guards verbally harassed him and property was
11 improperly taken. These allegations failed to state a claim. In the prior similar complaint,
12 plaintiff was provided leave to amend but failed to cure the deficiencies of the complaint,
13 thus leave was not provided for the new case.

14 For all of these reasons, it is clear that this appeal is frivolous and taken in bad faith,
15 thus plaintiff's in forma pauperis status is **REVOKED**. The Clerk shall forward this Order to
16 the Ninth Circuit in case No. 13-16074.

17 **IT IS SO ORDERED.**

18 Dated: May 31, 2013.



PHYLLIS J. HAMILTON
United States District Judge

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